

Message Text

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ACTION OPIC-12

INFO OCT-01 ARA-16 ISO-00 EB-11 L-03 COME-00 CIAE-00

INR-10 NSAE-00 /053 W

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R 062231Z FEB 74

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC 1212

INFO AMEMBASSY LIMA

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E O 11652 NA

TAGS EFIN, CO

SUBJ: OPIC AND ANDEAN FORN INVESTMENT CODE

REF STATE 8207

1. IN DISCUSSION WITH FORNMIN FEB 6 I BROUGHT UP THE SUBJECT OF OPIC, SUBROGATION AND ARTICLE 51 OF THE ANDEAN PACT. I GAVE THE MIN AN AIDE-MEMOIRE WHICH SET OUT THE PROBLEM AND POINTED OUT THAT A COLOMBIAN INTERPRETATION FAVORABLE TO SUBROGATION WOULD HAVE A VALUABLE IMPACT ON FORN INVESTMENT IN COLOMBIA, SPECIFICALLY MENTIONING HANNA AND PEABODY COAL CO.

2. THE MIN SAID THAT THIS WAS A CLEAR CASE OF CONFLICT BETWEEN COLOMBIAN LAW AND TREATY. COLOMBIAN LAW ACCEPTED THE PRINCIPLE OF SUBROGATION AND OBVIOUSLY THE ANDEAN PACT SPECIFICALLY FORBADE IT. HE SAID THAT THIS WAS A LEGAL QUESTION WHICH INVOLVED MANY MINISTRIES AND IT WOULD TAKE SOME TIME TO PREPARE A REPORT BUT HE UNDERSTOOD THE IMPORTANCE OF THE ISSUE AND WOULD DO HIS BEST TO MOVE THINGS ALONG.

3. AS THE FORNMIN HAD GIVEN ME THE IMPRESSION THAT HE THOUGHT A STRICT INTERPRETATION OF THE ANDEAN PACT ARTICLE 51 WOULD HAVE TO PREVAIL OVER DOMESTIC LAW, I MENTIONED THAT I HAD HEARD IN WASHINGTON THAT BOLIVIA HAD INTERPRETED ARTICLE 51 IN SUCH A

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WAY AS TO ALLOW FOR SUBROGATION. VAZQUEZ EXPRESSED INTEREST IN

THIS AND SAID HE SUPPOSED IT WAS ALWAYS POSSIBLE TO FIND A FAVORABLE
LEGAL INTERPRETATION IF ONE LOOKED HARD ENOUGH.

3. COMMENT: THE INFO ON BOLIVIA I RECALLED FROM A MEETING IN
THE OPIC OFFICE IN WASHINGTON IN OCTOBER OF LAST YEAR. IF MY
RECOLLECTION IS CORRECT I WOULD APPRECIATE RECEIVING THE LEGAL
LANGUAGE BOLIVIA HAS USED TO ALLOW SUBROGATION OR ANY OTHER
INTERPRETATIONS FAVORABLE TO OUR CASE. WHITE

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